

⁷ See Amendment of the Commission's Rules Concerning Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685, 6696 ¶ 24 (2002).

licensees with a degree of certainty regarding how to comply with the requirement.⁸ In 2004, the Commission proposed to amend its rules to permit AMTS licensees to provide private mobile radio service, as well as commercial service, for units on land.⁹ It also proposed changes to certain other AMTS-related rules.¹⁰ These rulemaking proposals remain pending in WT Docket No. 02-257.

3. Petitioner represents clients interested in participating in the upcoming AMTS auction that seek to use AMTS spectrum for telemetry purposes, such as fixed telemetry systems (*e.g.*, Supervisory Control and Data Acquisition), itinerant or temporary fixed applications (*e.g.*, surveying), and mobile applications (*e.g.*, meter reading).¹¹ Petitioner seeks “clarification” of how the AMTS rules would apply to a licensee using the spectrum for telemetry purposes.¹² Petitioner submits that potential bidders need the answers to these questions in order to “have basic information required to participate in the auction.”¹³

4. *Discussion.* Under Section 1.2 of its Rules, the Commission “may . . . issue a declaratory ruling terminating a controversy or removing uncertainty.”¹⁴ It is well-established that we have broad discretion whether to issue such a ruling.¹⁵ Petitioner asks us to speculate on the effects of rules that have not been adopted and conditions that have not occurred. Without knowing what, if any, rule changes will be adopted in the pending proceeding referenced earlier, it would be premature to address the concerns raised by Petitioner at this time.¹⁶ Accordingly, we decline to grant the requested ruling.¹⁷

5. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 253(d), and 332(c)(3)(A) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 253(d), 332(c)(3)(A), and Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2, that the request filed by Duane Morris, LLC on March 18, 2005, IS DENIED.

⁸ See *id.* at 6707 ¶ 48-49. Specifically, for service areas with major waterways, substantial service can be demonstrated by continuous coverage of two-thirds of those waterways; and for service areas without major waterways, substantial service can be demonstrated by coverage of two-thirds of the area's population.

⁹ Maritel, Inc. and Mobex Network Services, LLC, *Notice of Proposed Rule Making*, WT Docket No. 04-257, 19 FCC Rcd 15225, 15228-29 ¶ 4 (2004).

¹⁰ See *id.* at 15229 ¶ 5.

¹¹ *Letter* at 2.

¹² *Id.* at 3. Specifically, Petitioner asks if there will be any substantial safe harbor for private mobile radio service operations; whether the requirement that AMTS stations provide priority to marine communications would apply; and whether waivers of other Part 80 rules would be needed to engage in co-primary telemetry operations.

¹³ *Id.* at 4.

¹⁴ 47 C.F.R. § 1.2.

¹⁵ See, *e.g.*, Telephone Number Portability, *Order*, CC Docket No. 95-116, 19 FCC Rcd 6800, 6810 ¶ 20 (2004).

¹⁶ Cf. Microscope Associates, Inc., *Order*, 19 FCC Rcd 10451, 10545 ¶ 8-9 (WCB 2004) (declining to issue declaratory ruling where matter was subject of pending remand, and issues likely would be resolved in that proceeding).

¹⁷ We note that the Commission will hold a pre-auction seminar for Auction No. 61 on May 25, 2005, which will provide interested parties an opportunity to question the Commission staff responsible for the AMTS licensing, service rules and auction procedures. See Automated Maritime Telecommunications System Spectrum Auction Scheduled for August 3, 2005: Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 61, *Public Notice*, DA 05-1047 (WTB rel. Apr. 21, 2005).

6. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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